

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TOMAS LOPEZ MENEWETHER,

Case No: C 07-4204 SBA (PR)

Plaintiff,

ORDER GRANTING PLAINTIFF'S ADMINISTRATIVE MOTION TO COMPEL INITIAL DISCLOSURES

VS.

Dkt. 80

B. POWELL, et al

Defendants.

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This is a prisoner civil rights action under 42 U.S.C. § 1983 in which counsel has been appointed to represent Plaintiff. The parties are presently before the Court on Plaintiff's administrative motion to compel initial disclosures pursuant to Federal Rule of Civil Procedure 26. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS the motion for the reasons set forth below.

I. BACKGROUND

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Plaintiff commenced the instant action pro se on August 16, 2007. On September 27, 2011, the Court appointed the law firm of Sheppard, Mullin, Richter & Hampton and attorneys Otis McGee Jr. and James Higgins to represent Plaintiff. Dkt. 72. At the initial Case Management Conference held on November 17, 2011, Plaintiff raised the issue of Defendants' refusal to provide initial disclosures under Rule 26. Defendants countered that because Plaintiff initiated the action pro se, they were exempt from the initial disclosure requirements of Rule 26(a)(1)(B)(iv). The Court indicated that if the parties were unable to reach an agreement on the initial disclosure issue, Plaintiff could file an administrative motion to compel said disclosures. Accordingly, Plaintiff has filed an administrative

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1 motion to compel Defendants to provide initial disclosures. Dkt. 80. Defendants have filed
2 an opposition to the motion. Dkt. 82.

3 **II. DISCUSSION**

4 Federal Rule of Civil Procedure 26 requires the parties to provide initial disclosures
5 to the opposing party “without awaiting a discovery request[.]” Fed. R. Civ. P. 26(a)(1).

6 The purpose of Rule 26 initial disclosures is to accelerate the exchange of basic
7 information, encourage counsel to evaluate the case, and enhance settlement opportunities.

8 Schwarzer, et al., Cal. Practice Guide: Fed. Civ. P. Before Trial (The Rutter Group 2011)
9 ¶ 1:190, at 11-27 (citing Notes of Advisory Committee on 1993 Amendments to Fed. R.

10 Civ. P. 26(a)).

11 Various types of proceedings are exempt from the initial disclosure requirement,
12 including “an action brought without an attorney by a person in the custody of the United
13 States, a state, or a state subdivision[.]” Fed. R. Civ. P. 26(a)(1)(B)(iv). Defendants rely on
14 this provision as the basis for their refusal to provide initial disclosures to Plaintiff.
15 However, this exemption no longer applies because Plaintiff is now represented by counsel.
16 See Harris v. Hogle, No. 1:05-cv-815, 2010 WL 2302309, at *2 (W.D. Mich. June 4, 2010)
17 (finding that the Rule 26(a)(1)(B)(iv) exemption “no longer applied” once plaintiff became
18 represented by counsel).

19 Defendants cite Vaden v. Summerhill, 449 F.3d 1047 (9th Cir. 2006) for the
20 proposition that where an action is commenced by a pro se prisoner, it is forever exempt
21 from Rule 26. Defs.’ Opp’n at 3. This contention lacks merit. Vaden concerned whether a
22 prisoner civil rights action was subject to the exhaustion requirement under the Prisoner
23 Litigation Reform Act—not whether the initial disclosure requirement is triggered where
24 counsel is appointed to represent a prisoner. Moreover, Defendants overlook the Advisory
25 Committee Notes following Rule 26 which provide that even if a case is exempt under Rule
26(a)(1)(B), “the court can order exchange of similar information in managing the action
27 under Rule 16.” Fed. R. Civ. P. 26, Advisory Comm. Note (2000 Am.).
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1 Finally, Defendants argue that requiring initial disclosures at this juncture is not an
2 efficient use of the parties' time and resources. Defs.' Opp'n at 5. Again, the Court is not
3 persuaded. Although this case has been pending for some time, it is important to note that
4 counsel was only recently appointed. Thus, unlike a pro se plaintiff, an attorney will be
5 able to utilize the initial disclosures in a manner consistent with the purposes of Rule 26;
6 namely, to promote counsel's evaluation of the case and enhance settlement opportunities.
7 Thus, the underlying purposes of Rule 26 will be served by requiring the exchange of initial
8 disclosures, notwithstanding the length of time that the action has been pending.

9 **III. CONCLUSION**

10 For the reasons stated above,

11 IT IS HEREBY ORDERED THAT:

- 12 1. Plaintiff's administrative motion to compel initial disclosures is GRANTED.
13 2. The parties are directed to provide their respective initial disclosures under
14 Rule 26(a) by no later than January 10, 2012.
15 3. This Order terminates Docket 80.

16 IT IS SO ORDERED.

17 Dated: December 13, 2011



SAUNDRA BROWN ARMSTRONG
United States District Judge

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